

REMARKS

Reconsideration and allowance are respectfully requested. Claims 1-17, 19-21 and 23-26 are currently pending and stand rejected. Applicant has amended claim 17. New claims 27-33 have been added. No new matter has been added.

§ 112 rejection

Claim 17 was rejected under 35 U.S.C. § 112, second paragraph, as begin indefinite. Applicant has corrected the antecedent basis problem helpfully noted by the Examiner. Withdrawal of the § 112, second paragraph rejection is therefore respectfully requested.

§ 102 rejections

Claims 1-5, 7-15, 17, 19, 20, 23, 25 and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,965,300 to Gale ("Gale"). Applicant respectfully traverses this rejection.

The Office Action supported the § 102(b) rejection under two different interpretations of Gale. This is despite the fact that, in the § 103(a) rejection, the Office Action explicitly admitted that Gale fails to disclose the claimed standoff portions.

In a first interpretation of Gale, the Office Action asserts that Figures 4 and 5 of Gale show standoff portions formed by the lower portion of the inner side wall surface of the major wells 91 (p. 3). In a second interpretation of Gale, the Office Action asserts that the cylindrical rib 96 is the claimed standoff portion. Neither of these interpretations discloses the claimed invention, however, because the Office Action ignores the claimed relationship between the standoff members and the divider members.

The inner side wall surface of the wells 91 cannot be considered the claimed standoff portion and still anticipate the claims because, under this interpretation, there would be no divider members, let alone a standoff portion having a container contact surface spaced from corresponding divider members (independent claim 1) or offset from a lower portion of the divider members (independent claim 12) or spaced inwardly from the divider members

(independent claim 20). The Office Action never explains which portions in Figures 4 and 5 act as the claimed divider members under this interpretation, let alone show where Gale discloses the claimed spaced or offset relationship between the divider members and the standoff portion.

The cylindrical rib in 96 in Gale also cannot be considered the claimed standoff portion and still anticipate the claims. The Office Action asserts that under this interpretation, the side walls 92 would be considered the divider members. However, the cylindrical ribs 96 are designed to receive the top of a bottle (col. 4, lines 60-64), not the bottom. As shown in Figure 2 of Gale, the bottle merely sits on top of the cylindrical rib 96 without the rib 96 actually engaging the lower portion of the bottle like the claimed invention. In fact, Gale admits that only the wells 91 (not the ribs 96) prevent the sides of bottles from rubbing against each other (col. 4, lines 64-67). Thus, under this interpretation, Gale fails to disclose standoff portions that engage the lower portion of any containers (independent claims 1, 12 and 20).

In both interpretations, the Office Action assumes that Gale shows the claimed unitary bottom panel. Applicants respectfully note that the Office Action applies a definition of "unitary" that is impermissibly outside the broadest reasonable interpretation consistent with the specification. "The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." MPEP § 2111. Figures 3 and 6 of the present application show a bottom panel that is a single piece (i.e., unitary). By contrast, Gale clearly shows a bottom panel that is divided into two separate bottom flaps 21 and 22 that are folded inwardly over a bottom end (col. 2, lines 54-58). One of ordinary skill in the art would not have interpreted the word "unitary" to cover the two-flap structure of Gale because doing so would be inconsistent with what is taught in the specification. Thus, contrary to the Office Action's assertion, Gale does not disclose a crate comprising a unitary bottom panel.

Applicant recognizes that the Examiner may be arguing that the two bottom flaps are "unitary" because they are formed from the same piece of cardboard (see Fig. 3 of Gale); in other words, the Examiner may be arguing that the two-flap bottom of Gale is "unitary" because the two flaps are connected via the side walls. However, claim 1 (for example) specifies that the bottom panel is unitary and that the two pair of sidewalls are attached to the periphery of the bottom panel. Thus, the attachment of the two flaps to each other via the side walls is not

sufficient to meet the claim term “unitary bottom wall” because the claim specifies that the bottom panel itself be “unitary” apart from its claimed attachment to the four sidewalls.

Additionally, the claims state that the two pair of opposed sidewalls are attached to the periphery of the bottom panel. In Gale, “end 1” and “end 2” are attached to flap 21 and flap 22, respectively, at the folds, but the “side 1” and “side 2” are not attached “to the periphery” of the bottom panel (flaps 21 and 22, according to the Examiner).

Claims 1-17, 19 and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,351,814 to Apps (“Apps”). Applicants respectfully traverse this rejection.

The Office Action admitted that Gale fails to disclose standoffs attached to a divider (p. 4). However, the Office Action asserted that support areas 122 shown in Apps are the same as the claimed standoff portions. Applicants respectfully disagree. The claims clearly state that the standoff portions extend inwardly into the container receiving area and engage the lower portion of the container. In other words, the claimed standoff portions are not mere platforms for the containers.

The bottle support areas 122 in Apps, by contrast, are simply circular areas that contact the bottom of a beverage container and do not extend inwardly into any contact receiving area to engage a lower portion of the beverage container (see, e.g., Figs 1A, 1B and 4, which show the bottle 108 sitting on top of the bottle support area 122). The bottle support areas 122 simply act as flat platforms and do not engage any portion of the container. As can be seen in Figs. 1A and 1B, the only structures that extend into the bottle compartment area in Apps are the dividing walls 116, not the bottle support areas 122.

The claimed invention, by contrast, has both divider members and at least one standoff member that extend into the compartment area, where the standoff member engages the lower portion of the beverage container to stabilize it. Because Apps fails to disclose the claimed standoff member, Apps does not anticipate claims 1-17, 19 and 25. Withdrawal of the rejection is therefore respectfully requested.

§ 103 rejections

Claims 1-4, 7, 8, 10-13, 20, 25 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gale in view of U.S. Patent No. 4,700,833 to Hammett ("Hammett") or U.S. Patent No. 5,335,814 to Hepp ("Hepp"). Applicant respectfully traverses this rejection.

The Office Action admitted that Gale fails to disclose the claimed standoffs attached to a divider, but asserted that "it would have been obvious to add the divider with attached standoffs in order to reinforce the standoffs and space the divider from the bottles to prevent label damage" (p. 4). Applicant respectfully disagrees.

Gale explicitly teaches away from being combined with Hammett or Hepp. As noted in Applicant's previous response, Gale focuses on a container that can eliminate the user of vertical partitions (col. 1, lines 23-26). Gale also details the disadvantages of vertical partitions, including label scuffing and separate assembly (col. 1, lines 9-23). One of ordinary skill in the art would have been led away from using any kind of vertical partitioning structure based on the explicit teachings of Gale.

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." MPEP § 2143.01. Combining Gale, which is a collapsible structure specifically designed to avoid vertical partitions, with Hammett or Hepp, which show rigid, non-collapsible vertical structures, would change the principle of operation of Gale. Because there is no motivation to combine Gale with Hammett or Hepp, the Office Action fails to set forth a prima facie case of obviousness with respect to claims 1-4, 7, 8, 10-13, 20, 25 and 26, and withdrawal of the rejection is respectfully requested.

Claims 5, 6, 15, 16, 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gale in view of Apps. Claims 5, 6, 15, 16, 23 and 24 depend on patentable independent claims 1 and 12 and are therefore patentable for the reasons explained above. Gale fails to show a unitary bottom panel, and Apps fails to show a standoff portion that engages a lower portion of the container. The Office Action therefore fails to set forth a prima facie case of obviousness with respect to claims 5, 6, 15, 16, 23 and 24, and withdrawal of the rejection is respectfully requested.

Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Gale in view of U.S. Patent No. 5,673,791 to Jamison ("Jamison"). Applicants respectfully traverse this rejection. Adding Jamison to Gale still does not overcome the deficiencies of Gale noted above because Jamison focuses solely on a lid lock, not on the structure of the crate itself. The Office Action therefore fails to set forth a prima facie case of obviousness with respect to claim 21, and withdrawal of the rejection is respectfully requested.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Applicant hereby Petitions for a 1-month extension of time in which to respond to the Office Action, thereby extending the response date to February 19, 2003.

Please charge Deposit Account No. 50-1984 for \$236 which covers a one-month extension of time (\$110) and seven additional claims in excess of twenty (\$126). If any additional fees are necessary, the Commissioner is authorized to charge Deposit Account No. 50-1984 for any additional fees or credit the account for any overpayment.

Respectfully submitted,



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APPENDIX A

VERSION WITH MARKINGS TO SHOW CHANGES MADE

--CLAIMS--

17. (Three times amended) The crate of claim 12, wherein [the plurality of] said at least one standoff member[s have] has a mating surface for engaging the container.